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From:

Sent: Tuesday, October 21, 2008 12:14 PM

To:

Cc:

Subject: RE: Privilege Under I.R.C. 7525

I think it's fine to follow up and ask the taxpayer to establish that the advice came from a federally authorized tax practitioner, but that should easily be shown since just about anyone can be an FATP under Circular 230 and the 601.502 Statement of Procedural Rules.

[REDACTED]

The tax advice privilege is co-extensive with the attorney-client privilege; it follows that if the taxpayer can establish that the opinions were shared with law firms and accountants in order to enable the FATP to provide the advice, they may remain protected under the Kovel doctrine. But if, as you indicate, the completed opinion was already provided to the client and then shared with others, the law firm and accountants could not have been employed to enable the FATP to provide advice. Sharing of the completed opinion with third parties would destroy its confidentiality and its privileged status, unless the law firm employed [REDACTED] to prepare the opinion that would enable it to provide legal advice to the client. The taxpayer should be required to establish exactly who viewed the opinion and why.